

# DRAFT AIA® Document B101™ - 2007

## Standard form of agreement between Owner and Architect

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(In words, indicate day, month and year)

BETWEEN the ~~Architect's client identified as the Owner~~,  
(Name, address and other information)

\_\_\_\_\_  
\_\_\_\_\_  
a Governmental Body of the State of South Carolina as defined by Title 11, Chapter 35 of  
the South Carolina Code of Laws, as amended,  
and the Architect:  
(Name, address and other information)

\_\_\_\_\_  
for the following Project:  
(Name, location and detailed description)

### OSE PROMULGATION OF CONTRACT REVISIONS

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\_\_\_\_\_  
The Owner and Architect agree as follows.

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

§ 1.2 The Owner's anticipated dates for ~~commencement of construction and~~ Substantial Completion of the construction Work are set forth below is:

~~1— Commencement of construction date:~~

~~November 28, 2008~~

~~2— Substantial Completion date:~~

~~November 28, 2009~~

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.



~~§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.~~ Architect agrees that all Drawings and Specifications and other documents prepared by Architect for the Project which are utilized by Owner and/or Owner's contractor or contractors, shall be reasonably accurate and complete as is customary for typical construction documents. Architect shall notify Owner in a prompt and timely manner of any discovered discrepancies, inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflicts or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.

§ 2.3 The ~~Architect shall identify a~~ Architect's representative identified in Section A.2.4 of Exhibit A shall be authorized to act on behalf of the Architect with respect to the Project. ~~The Architect shall not change the designated representative without the Owner's written consent, which consent the Owner shall not unreasonably withhold.~~

§ 2.3.1 The Architect shall not change its Consultants identified in Section A.2.5 of Exhibit A without the Owner's written consent, which consent the Owner shall not unreasonably withhold.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

## **§ 2.5 INSURANCE COVERAGES**

§ 2.5.1 Architect shall procure and maintain in effect during the term of this Agreement the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by Owner.

.1 Professional Liability Errors and Omissions Insurance including contractual liability coverage with limits of not less than \$1,000,000 per claim and in the aggregate. Architect shall maintain this coverage in effect during the term of this Agreement and for two (2) years after the Date of Substantial Completion. Architect shall give prompt written notice to Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement.

.2 Worker's Compensation Insurance with statutory benefits and limits which shall fully comply with all State and Federal requirements and have limits not less than \$500,000 per accident, \$500,000 per disease and \$500,000 policy limit on disease.

.3 Comprehensive Automobile Liability Insurance (owned, hired, and non-owned vehicles) with limits not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

.4 Commercial General Liability Insurance. A broad form Commercial General Liability Insurance Policy including, without limitation and appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting Architect's agreements in favor of the additional insureds, including coverage for the Architect's obligations under Sections 2.6 and 2.7. The Commercial General Liability Insurance Policy must be written on an occurrence basis with a combined single limit of liability of not less than \$1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than \$1,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than \$1,000,000 for Completed Operations and Products Liability.

## **§ 2.5.2 INSURANCE REQUIREMENTS FOR SUBCONSULTANTS**

Architect agrees to require Subconsultants to comply with the insurance provisions required of Architect pursuant to this Agreement unless Architect and Owner mutually agree to modify these requirements for Subconsultants whose work is of relatively small scope. Architect agrees that it will contractually obligate its Subconsultants to advise Architect promptly of any changes or lapses of the requisite insurance coverages and Architect agrees to promptly advise Owner of any such notices Architect receives from its Subconsultants. Architect agrees that it will contractually obligate its Subconsultants to indemnify and hold harmless Owner to the same extent that Architect is required to do so as provided in this Agreement. Architect assumes all responsibility for monitoring Subconsultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until

final completion of the Project.

### **§ 2.5.3 ADDITIONAL INSURANCE REQUIREMENTS**

Architect shall not make changes in or allow the required insurance coverages to lapse without Owner's prior written approval thereto. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Architect fail to provide and maintain certificates as set forth herein, Owner shall have the right, but not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Architect, or to seek reimbursement for said payments from Architect. Any sums paid by Owner shall be due and payable immediately by Architect upon notice from Owner. Receipt and review by Owner of any copies of insurance policies or insurance certificates shall not relieve Architect of his obligation to comply with the insurance provisions of this Agreement. The insurance provisions of this Agreement shall not be construed as a limitation on Architect's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

### **§ 2.5.4 ENDORSEMENTS & ADDITIONAL INSURED**

**§ 2.5.4.1** All policies for insurance must be endorsed to contain a provision giving Owner a (10) days prior written notice of cancellation of that policy for non-payment of premiums and a thirty (30) day prior written notice by certified mail of any cancellation or nonrenewal of that policy (including individual coverages of the policy, or any reduction in policy limits) for any other reason.

**§ 2.5.4.2** Prior to performing services, and thereafter upon replacement of each required policy of insurance, Architect shall provide to the Owner a written endorsement to the Architect's general liability insurance policy that (i) names the Owner as an additional insured, (ii) provides that no cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless all additional insureds have been given at least ten (10) days prior written notice of cancellation for non-payment of premiums and thirty (30) days prior written notice of cancellation for any other reason, and (iii) provides that the Architect's liability insurance policy shall be primary, with any liability insurance of the Owner as secondary and noncontributory. Prior to performing services, and thereafter upon renewal or replacement of each required policy of insurance, Architect shall provide to the Owner a signed, original certificate of liability insurance (ACORD 25). This certificate shall identify the types of insurance, state the limits of liability for each type of coverage, include a provision for written notice prior to cancellation as set forth in Section 2.5.4.2(ii), name the Owner as a Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Architect's insurance agent or the insurance company. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Architect with reasonable promptness.

The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

- ~~1~~ — General Liability  
~~\$1,000,000~~
- ~~2~~ — Automobile Liability  
~~\$1,000,000~~
- ~~3~~ — Workers' Compensation  
~~Statutory~~
- ~~4~~ — Professional Liability  
~~\$500,000~~

### **§ 2.6 INTELLECTUAL PROPERTY INDEMNITY**

Without limitation and notwithstanding any other provision in this agreement, Architect shall, upon receipt of notification, defend and indemnify the Indemnitees against all actions, proceedings or claims of any nature (and for



all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving Intellectual Property (IP) rights related to the Instruments of Service. Architect's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Architect's compliance with a detailed, exact statement of particulars (such as a statement prescribing materials, dimensions, and quality of work) furnished by the State unless Architect knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Architect's compliance with a detailed, exact statement of particulars furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Architect and failed to identify such product to Architect. State must reasonably cooperate with Architect's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, may allow Architect sole control of the defense, so long as the defense is diligently and capably prosecuted. State may participate in the defense of any action. Architect's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. "IP rights" means any rights protected by the laws governing patents, copyrights, trademarks, trade secrets, or any other proprietary rights. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the foregoing.

### **§ 2.7 THIRD PARTY INDEMNIFICATION**

Without limitation and notwithstanding any provision in this agreement, the Architect shall indemnify and hold harmless the Indemnitees for and against claims, damages, losses and expenses (including attorneys' fees) asserted by a third party against an Indemnitee arising out of or resulting from negligent acts or omissions of the Architect, a consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). Architect shall not be required to indemnify an Indemnitee to the extent Indemnitee's damages result from Indemnitee's own negligence. Such obligation shall not be construed to negate, abridge, or reduce any other rights, including any other obligations of indemnity, which would otherwise exist as to a party or person described in this Section 2.7. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the foregoing.

### **§ 2.8 DECISIONS BY THE ARCHITECT**

Any reference in the Contract Documents to the Architect taking action or rendering a decision with a "reasonable time" or "reasonable promptness" is understood to mean no more than fourteen days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.

## **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

**§ 3.1** The Architect's Basic Services consist of those services described in Article 3 and those services identified elsewhere in this Agreement as Basic Services. Architect's Basic Services include usual and customary civil, structural, mechanical, fire protection, and electrical engineering services. Services not set forth in Article 3 or identified elsewhere in this Agreement as Basic Services are Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, but not later than 15 days after execution of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the

Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect's assistance shall include preparation of all necessary applications and submittals.

§ 3.1.7 In the performance of its duties under this agreement, the Architect shall comply with (a) the requirements of Chapter 5 and Appendix A of the South Carolina Manual for Planning and Execution of State Permanent Improvement Projects – Part II (the "Manual"), and (b) the South Carolina Consolidated Procurement Code and the associated regulations. Should substantive changes to these provisions of the Manual occur during the term of this agreement that result in an increase or decrease in the level of services to be provided by the Architect, the fee of the Architect shall be equitably adjusted by negotiation between the parties to reflect such increase or decrease.

§ 3.1.8 The Architect's Basic Services include the following:

.1 Consistent with Section 5.4 (Owner provided info), the Architect shall review and evaluate the information provided by the Owner and advise the Owner of any additional information required by the Architect for completion of the Project.

.2 The Architect shall provide a preliminary seismic evaluation of the structures in accordance with Chapter 5 of the Manual.

.3 The Architect shall provide Estimates of Construction Cost and obtain the Owner's written approval of the cost estimate at each phase of design.

.4 The Architect shall provide the Owner with Record Plans, as required in Section 3.6.6.6, showing any significant changes in the work made during construction based on marked-up prints, plans and other data furnished by the Contractor to the Architect.

.5 The Architect shall prepare, on behalf of the Owner, applications and supporting documentation for all design-related and land-use permits, variances and approvals required by state and local governmental authorities having jurisdiction over the Project (e.g., grading, utilities, zoning and encroachment). The Architect shall revise applications and supporting documentation as required to resolve comments received from such governmental authorities, provided however that:

(a) The Architect's appearance as an expert, as well as the preparation of special drawings, visual aids and other materials and design work prepared solely for an appearance before local zoning boards or planning commissions shall be considered an Additional Service; and,

(b) Specialized permits, such as, but not limited to, permits required by Federal agencies are not included within the scope of Basic Services unless such permits are listed in Article 14.

.6 The Architect shall comply with the State Flood Plain Development requirements in accordance with State Law and the Manual.

.7 The Architect shall comply with the State's requirements for telephone, data and communications equipment rooms as required by the Division of State Information Technology.

.8 The Architect shall provide the local Building Official a complete set of Construction Documents to review and meet with the local officials to familiarize them with the proposed project.

.9 The Architect shall meet with the local Fire Official to review proposed fire protection systems, provide the local Fire Official and the regional Deputy State Fire Marshal with a set of Construction Documents each. The Architect shall notify the local Fire Official and the regional Deputy State Fire Marshal of the time and place the fire protection and detection system(s) are to be tested.

.10 The Architect's fire protection engineer shall review all fire protection systems shop drawings and associated hydraulic calculations for compliance with the plans and specifications in the bid documents, the National Fire Protection Association Codes, and other codes or standards indicated on the Sprinkler System Specification Sheet. After reviewing and approving the fire protection systems shop drawings, the fire protection engineer shall submit to both the State Fire Marshall and OSE a copy of the shop drawings along



with the engineer's certification that he has reviewed and approved the shop drawings and hydraulic calculations and finds them in compliance with the plans and specifications in the bid documents, the National Fire Protection Association Codes, and other codes or standards indicated on the Sprinkler System Specification Sheet.

.11 The Architect's fire protection engineer of record shall attend the testing of the fire protection and detection system(s) and provide the Owner and OSE the following:

(a) The installer's Certificate of Compliance with code requirements for installation and testing.

(b) The Fire Marshal's Inspection Report

(c) The Record of Training of users for Systems Operation.

.12 The Architect shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation of site visits and inspection reports as required by the Owner to maintain a comprehensive record of the Project. The State's Project Number and Name shall be shown on all documents.

**(Owner Initial if Applicable) § 3.1.19 SERVICES PROVIDED IN TWO STAGES/CONTRACT DEPENDS ON CONTINUED FUNDING**

**§ 3.1.19.1** The services to be provided by the Architect under this Agreement shall be divided into two stages. Stage 1 Services shall include all Basic Services through completion of Schematic Design Phase Services. Stage 2 Services shall include all services from the start of the Design Development Phase through the completion of all services to be provided under this Agreement.

**§ 3.1.19.2** Of the total contract price, only funding for performance of this contract through completion of Stage 1 Services has been approved under Title 2, Chapter 47 of the South Carolina Code of Laws.

**§ 3.1.19.3** The parties contemplate that upon completion of Stage 1 Services, the Joint Bond Review Committee and Budget and Control Board will approve additional funds for Stage 2 Services. Notwithstanding any other provision of this Agreement, the Owner's total obligation to pay or reimburse the Architect is limited to the amount allotted to this Agreement under Section 3.1.19.2 unless and until such time as expenditure of additional funds is approved pursuant to Title 2, Chapter 47 of the South Carolina Code of Laws and any other applicable laws and the Owner provides the Architect with written notice to proceed with Stage 2 Services.

**§ 3.1.19.4** The Architect acknowledges and agrees that upon completion of Stage 1 Services, further work will be suspended for a reasonable amount of time, as determined by the meeting schedules of the Joint Bond Review Committee and Budget and Control Board, as needed for the Agency to prepare and submit a revised Project scope and budget to the Joint Bond Review Committee and Budget and Control Board for their approval. In the event that the Joint Bond Review Committee and Budget and Control Board do not approve additional funding for the Project, the Agency intends to terminate this contract pursuant to the "Termination for Convenience" clause of this contract subject to limits on agency's obligation to pay under Section 3.1.19.3 and provided the Architect shall not be entitled to recover as damages or otherwise, anticipated profits on work not performed. The Agency shall provide the Architect notice of the lack of funding for Stage 2 Services within a reasonable time of the Agency's receiving that notice.

**§ 3.2 SCHEMATIC DESIGN PHASE SERVICES**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. This discussion shall address implementation of the State of South Carolina's Environmentally Preferred Purchasing Policy, Procurement Policy Statement No. 2009-1, issued October 15, 2009. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Design Documents shall conform to the requirements of Chapter 5 of the Manual.

§ 3.2.5.1 The Architect shall ~~use~~ ~~consider~~ environmentally responsible design ~~practices~~ ~~alternatives~~, such as material choices, building systems selection, and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. In performing these duties, the Architect shall, to the extent applicable to the Project, implement the State of South Carolina's Environmentally Preferred Purchasing Policy, Procurement Policy Statement No. 2009-1, issued October 15, 2009. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.5.3 Hazardous Materials Excluded. Architect shall not design, specify or incorporate in the Drawings or Specifications for the Project, and shall not approve any shop drawings specifying any Hazardous Materials, in such manner as would violate the requirements of all existing laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site, the Work or any part of either, or would cause substantial damage or a risk of substantial damage to the environment, or in such a manner as to leave any residue which could be hazardous to persons or property or cause liability to Owner. For purposes of this Agreement the term "Hazardous Materials" shall include, but shall not be limited to, substances currently defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. Sec. 9061 et seq, Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1802, the Resource Conservation Act and Recovery Act, 42 U.S.C. Sec. 6910 et seq., and all other environmental laws, rules and regulations as all of the above may be amended from time to time.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents, along with the State Design/Construction Documents Transmittal Form SE-271, to the Owner, and request the Owner's approval the South Carolina Office of State Engineer (OSE) in the number requested by the Owner and OSE Project Manager. The Architect and the Architects consultants shall arrange for and participate in a table-top review of the Schematic Design Documents with the Owner and OSE. .

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, OSE's table-top review comments, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Design Development Documents shall incorporate the accepted resolution of all Owner and OSE comments on the Schematic Design Document submittal.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.



### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the OSE and Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of the OSE and other governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist and coordinate with the Owner in the development and preparation of (1) bidding ~~and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms;~~ (2) ~~the form of agreement between the Owner and Contractor documents;~~ and (3) ~~the Conditions of the Contract for Construction (General, 2) Supplementary and other Conditions;~~ of the Contract for Construction. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications ~~and may include~~ including bidding requirements and sample forms.

§ 3.4.3.1 The Architect shall, on behalf of the Owner, prepare applications and submittals for the Owner's use in obtaining all normal design-related permits and approvals required by governmental authorities having jurisdiction over the project.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit ~~the~~ to the Owner and OSE for review and approval, properly completed Construction Documents ~~to, in the Owner, number and form requested, including the State Design/Construction Documents Transmittal Form SE-271 and the revised estimate of the Cost of the Work.~~ The Architect shall advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the OSE and Owner's approval.

§ 3.4.6 The OSE and Owner's review and approval of the Construction Documents shall not relieve the Architect of its responsibility for compliance with the requirements of applicable statutes, regulations, codes and the Manual, or for design deficiencies, omission, or errors.

### § 3.4.7 MAXIMUM PRACTICABLE COMPETITION

§ 3.4.7.1 The purpose of a specification is to serve as a basis for obtaining a supply, service, information technology, or construction item adequate and suitable for the State's needs in a cost effective manner, taking into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs. It is the policy of the State that specifications permit maximum practicable competition consistent with this purpose. Specification shall be drafted with the objective of clearly describing the State's requirements. All specifications shall be written in a non restrictive manner as to describe the requirements to be met. (R. 19-445.2140(B)). The Specifications shall be drafted so as to assure cost effective procurement of the Owner's actual needs and shall not be unduly restrictive. (Section 11-35-2730)

§ 3.4.7.2 Unless necessary, the Architect shall not use brand name specifications, i.e., specifications limited to one or more items by manufacturers' names or catalogue numbers.

§ 3.4.7.3 To the extent reasonably possible, the Architect should avoid the overuse of brand name or equal specifications, i.e., specifications which use one or more manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet the Owner's requirements, and which provides for the submission of equivalent products.

### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

#### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective ~~contractors, bidders.~~ Following the OSE and Owner's approval of the Construction Documents and estimate of the Cost of the Work, the Architect shall assist the

Owner in (1) obtaining ~~either competitive bids or negotiated proposals~~; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any, including bidder responsibility; and, (4) awarding and preparing contracts for construction. Bidder responsibility shall be determined in accordance with Regulation 19-445.2125. During the bidding phase, all documents issued by the Architect shall be reviewed and approved by the Owner prior to issuance for compliance with state procurement requirements.

### **§ 3.5.2 COMPETITIVE BIDDING**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents as provided in the S.C. Modified AIA A701, 2007 edition. Before advertising for bids, the Architect shall submit to the OSE and Owner a record copy of the Bidding Documents to be issued to prospective bidders and a final estimate of construction cost.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders, subject to Regulation 19-445.2042;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; ~~and~~
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner; ~~and~~
- .6 evaluating the responsibility of bidders.

**§ 3.5.2.3** The Architect shall consider requests for substitutions and equivalent products, if the Bidding Documents permit substitutions and equivalent products, and shall prepare and distribute addenda identifying approved substitutions and equivalent products to all prospective bidders.

**§ 3.5.2.4** If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by less than ten percent, and the Owner elects to award the Contract, the Architect shall, without additional charge to the Owner, assist in negotiations to reduce the bid to an amount within the Owner's budget for the Cost of the Work, but not more than 10% below the Owner's budget for the Cost of the Work.

**§ 3.5.2.5** If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by more than ten percent and the Owner elects to continue the Project, the Architect shall, without additional charge to the Owner, modify the Contract Documents as necessary to bring the Project within the Owner's budget for the Cost of the Work. The Architect shall be responsible for all its costs associated with the redesign and rebidding of the Project, including the reproduction of revised documents and fees for any new or revised permits based on the revised plans. However, the Architect shall not be required to perform such additional services at no cost to the Owner if the unfavorable bids are the result of conditions beyond the Architect's reasonable control.

**§ 3.5.2.6** If the Owner elects to terminate the Project, then this Contract is terminated in accordance with Article 9.

### **§ 3.5.3 ~~[reserved]~~ NEGOTIATED PROPOSALS**

~~**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by~~

- ~~.1 — procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 — organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~**§ 3.5.3.3** The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~



## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction, unless otherwise provided in this Agreement. The Architect shall perform all duties and obligations that are assigned to the Architect in the General Conditions unless such duties or obligations on the part of the Architect are expressly waived in this Agreement. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall be a representative of and advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and, with the exception of the duties set forth in Section 3.6.6.5, terminates ~~on the date~~ twenty-one days after the Architect issues the final Certificate for Payment.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of construction, ~~or as otherwise required in Section 4.3.3,~~ (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall, at least once a month, submit a written report to the Owner to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.1.1 Site visits shall be made by representatives of the Architect and its consultants who are knowledgeable of the Project requirements and competent in each discipline having work in current progress. These representatives shall visit the site at intervals to assure conformance with the design shown in the Contract Documents and to observe, as experienced and qualified design professionals, the progress and quality of the various aspects of the Contractor's Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents, unless the Owner decides otherwise. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing with reasonable promptness, but no more than within any fourteen days of receipt of the request ~~time limits agreed upon or otherwise with reasonable promptness by the parties.~~

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either. Except in the case of interpretations resulting in omissions, defects, or errors in the

Instruments of Service or perpetuating omissions, defects, or errors in the Instruments of Service, the Architect and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render, with reasonable promptness, initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, and that to the best of the Architect's knowledge, information and belief, ~~the Work has progressed to the point indicated and that~~ the quality of the Work is in accordance with the Contract Documents. The Architect acknowledges that the Contract Documents provide for only 3.5% retainage. The foregoing representations are subject (1) ~~to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion,~~ (2) to results of subsequent tests and inspections, (2) to correction of minor deviations from the Contract Documents prior to completion, and (3) to specific qualifications expressed to the Owner in writing by the Architect prior to issuance of a Certificate for Payment.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness ~~while allowing sufficient time in the Architect's professional judgment to permit adequate review.~~

§ 3.6.4.2 In accordance with the Architect-approved Contractor's submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing ~~within any time limits agreed upon, or otherwise with~~



reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a detailed, chronological record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives, with supporting technical and cost documentation and data for the Owner's approval and execution in accordance with the Contract Documents. Prior to preparing any Modification, the Architect shall (a) request from the Contractor any substantiating data required by Article 7 of the General Conditions of the Contract for Construction, including cost or pricing data reference in Section 7.6.1, as applicable, and (b) assist the Owner in a thorough review of the information provided.

§ 3.6.5.1.1 For Construction Change Directives only, when the Contractor does not provide properly itemized cost information in accordance with Article 7 of the General Conditions of the Contract for Construction, the Architect shall, for the Owner's information and as an initial basis for establishing the upper limit of compensation to the Contractor, provide the itemization and shall use the labor, material and equipment unit costs as listed in the most current issue of the "Means Construction Cost Data" series of cost guides, adjusted for local cost conditions. The Architect's effort required to prepare the cost itemization shall be considered as an Additional Service.

§ 3.6.5.2 The Architect shall maintain detailed, chronological records relative to changes in the Work.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect and the Architect's consultants and engineers shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect shall issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.1.1 The Architect and the Architect's consultants and engineers shall provide one Substantial Completion Inspection, and one Final Completion Inspection as a part of Basic Services. Where projects have been designed for phased completion, the Architect and the Architect's consultants and engineers shall provide one Substantial Completion Inspection and one Final Completion Inspection for each phase of the Project. If additional inspections are required, payment to the Architect shall be adjusted in accordance with Section 4.3.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 ~~Upon request of~~ During the Owner, and prior to the expiration of one year from tenth month after the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to inspect the Project and review the facility operations and performance. The Architect shall prepare a report indicating outstanding work or deficiencies in the Work to be corrected by the Contractor. The Architect shall provide the report to the Owner and OSE and, at the Owner's direction, to the Contractor. Upon the Owner's request and as an Additional Service, the Architect shall assist the Owner in taking necessary action to see that the deficiencies are corrected.

§ 3.6.6.6 The Architect shall prepare, from Contractor supplied-information, and provide to the Owner a set of reproducible Record Plans showing all significant changes in the work made during construction, as required by the Manual. Plans shall be stamped as "Record Plans" This set of reproducible documents shall be in addition to computer media plans required in Article 14, if any.

§ 3.7 COORDINATION OF SERVICES. Architect shall be fully responsible for coordinating all Architect's Basic and Additional Services required under this Agreement regardless of whether performed by its own employees or by consultants hired by Architect to perform a portion of its services ("Subconsultants"). The purpose of such coordination is to ensure that the services required are performed in a reasonably efficient, timely and economical manner. Architect shall be responsible to Owner for the services furnished to Architect by any Subconsultant to the same extent as if Architect had furnished the service itself. Architect also agrees to coordinate, and resolve any inconsistencies in its work and the work of its subconsultants. All of Architect's contracts with Subconsultants shall be in writing, signed by both parties, and shall include the following provision: "The Owner is intended to be a third party beneficiary of this agreement."

§ 3.8 COMPLIANCE WITH LAWS. Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, including but not limited to all zoning, restrictions or requirements of record, building, occupancy, environmental, disabled persons accessibility and land use laws, requirements, regulations and ordinances relating to the construction, use and occupancy of the Project (collectively "Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. Architect shall use its best efforts to avoid incorporating into the Project design, elements that would give rise to code interpretation questions and to discuss in advance all such situations with Owner.

#### **ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 ~~Additional~~ Unless otherwise provided in this agreement, additional s Services listed below and not identified as a Basic Service are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.



(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™-2007)		
§ 4.1.6 Building information modeling		
§ 4.1.7 Civil engineering	Included in Basic Services	
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™-2007)		
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site project representation		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-designed record drawings		
§ 4.1.15 As-constructed record drawings	Included in Basic Services	
§ 4.1.16 Post occupancy evaluation	Included in Basic Services	
§ 4.1.17 Facility Support Services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™-2007)		
§ 4.1.22 Commissioning (B211™-2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™-2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™-2007)		
§ 4.1.27 Furniture, Finishings, and Equipment Design (B253™-2007)		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations ~~or official interpretations~~;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 ~~[reserved] Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 ~~[reserved] Evaluation of the qualifications of bidders or persons providing proposals;~~
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 ~~[reserved] Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, promptly notify the Owner ~~with reasonable promptness~~, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect ~~where such review causes significant disruption to the Architects normal operations~~;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service provided such Change Orders and Change Directives are not the result of omissions, defects, or errors in the Instruments of Service;
- .4 ~~[reserved] Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services, other than those required in Section 3.6.6.5, 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier provided the delay in Substantial Completion of the Work is for causes beyond the control of the Architect, the Architect's consultants, or anyone for which either is responsible.

§ 4.3.3 ~~[reserved] The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

- .1 ~~\_\_\_\_\_ reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~
- .2 ~~\_\_\_\_\_ visits to the site by the Architect over the duration of the Project during construction~~
- .3 ~~\_\_\_\_\_ inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- .4 ~~\_\_\_\_\_ inspections for any portion of the Work to determine final completion~~

§ 4.3.4 ~~If the services covered by this Agreement have not been completed within Two ( 2 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the



Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. ~~Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~

**§ 5.2** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect of such increase or decrease and the corresponding changes in the Project's scope and quality. ~~The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.~~

**§ 5.2.1** The Owner shall review the Architect's documents and the estimate of Cost of the Work for each phase (Schematic, Design Development, Construction Documents, and Bid Documents) and shall submit its written approval to the Architect and OSE.

**§ 5.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.5** The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.6** ~~The Architect~~ Owner shall coordinate the services of ~~the Owner's~~ its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance on the same basis as required of the Architect ~~as appropriate to the services provided.~~

**§ 5.7** The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 5.8** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 5.9** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

**§ 5.10** ~~Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the~~ Owner should ~~shall~~ endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

**§ 5.11** Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.13 Notwithstanding anything to the contrary contained in this Agreement, Owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing Architect with information as to Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents, and in no way should any such review and approval alter Architect's responsibilities hereunder and with respect to such documents.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; and, in consultation with, and subject to approval by, the Owner, to make reasonable adjustments in the program and scope of the Project; ~~and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.~~

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall, at no additional cost, make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. However, the Architect shall not be required to perform such services at no cost to the Owner if the unfavorable estimate is the result of conditions beyond the Architect's reasonable control.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid ~~or negotiated proposal, the Owner shall,~~ the Owner, when permitted by and in accordance with applicable state law, may,

- .1 give written approval of an increase in the budget for the Cost of the Work and proceed with award of a contract;
- .2 authorize rebidding ~~or renegotiating~~ of the Project ~~within a reasonable time~~ without change not less than 90 days after the date of bid opening;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work and rebid the Project; or
- ~~.5 implement any other mutually acceptable alternative.~~
- .5 With the Architect's assistance, negotiate a contract with the lowest responsive and responsible bidder.



§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.6.4.

§ 6.8 If the Owner chooses to proceed under Section 6.6.1 or 6.6.2, the Architect shall not receive additional compensation for the increase in budget or delay in rebidding.

§ 6.9 If the Owner chooses to proceed under Section 6.6.5, the Architect shall not be entitled to additional compensation for any effort or additional work necessary to bring the contract within the Owner's budget for the Cost of the Work.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 The Architect ~~and the Owner~~ warrants that in transmitting Instruments of Service, or any other information, the Architect ~~transmitting party~~ is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, ~~including the Drawings and Specifications~~, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a perpetual, irrevocable, nonexclusive license to use and authorize others to use, at any time and in any manner, the Architect's Instruments of Service ~~solely and exclusively~~ for purposes ~~of including, but not limited to~~, constructing, using, maintaining, altering and adding to the structures which are the subject of the Instruments of Service at the general location of the site of the Project, and for any other use required by law. ~~Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain and provide to the Owner similar nonexclusive licenses from the Architect's consultants that have terms identical to those that obligate the Architect to the Owner as expressed above in this subparagraph consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to waive any claims against ~~indemnify and hold harmless~~ the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4 or pays the licensing fee stated in Section 11.9.

§ 7.4 ~~[reserved]~~ Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Architect shall not use or allow to be used the Drawings, Specifications and reports or the unique design aspects of this Project for any other project, without the prior written approval of Owner. Architect may re-use standard specification texts and details.

§ 7.6 Upon the filing by Architect of a petition in bankruptcy or upon any other proceeding or action by or against the Architect under the relevant law on bankruptcy, this Agreement shall be governed by Section 365(n) of the U.S. Bankruptcy Code, if applicable. If any person seeks to reject this Agreement pursuant to bankruptcy law, Owner shall have the option of using the Instruments of Service for either the original term of this Agreement or a period of five years after rejection is requested.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

~~§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~ All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Architect agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. Architect consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Architect by certified mail (return receipt requested) addressed to Architect at the address provided on Exhibit A or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

§ 8.1.1.1 Architect agrees that any act by the State regarding this Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase, "the State" includes any governmental entity transacting business with the Architect pursuant to the Agreement and the South Carolina Budget & Control Board.

### **§ 8.1.2 LIMITATIONS ON LIABILITY**

§ 8.1.2.1 To the extent damages are covered and paid for by property insurance provided by the Contractor, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Notwithstanding any other provision of this Agreement (including Sections 2.6 and 2.7), but subject to a duty of good faith and fair dealing, the ~~The~~ Architect and Owner waive ~~consequential damages for claims, disputes or other matters in question~~ against each other for listed damages arising out of or relating to this Agreement. Listed Damages are (1) damages incurred by the Owner for rental expenses, for losses of use of the Work, except to the extent such losses are covered by insurance or occur after acceptance of the certificate of substantial completion, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and for attorney's fees, insurance and interest (excluding post-judgment); and, (2) damages incurred by the Architect for principal office expenses and overhead, including, but not limited to, the compensation of personnel stationed there, rent, utilities and office equipment; for losses of financing, business and reputation, for loss of profit, for attorney's fees, insurance and interest (excluding post-judgment), and for claims made by the Architect's consultants for the types of damages the Architect has waived as against the Owner. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### **§ 8.2 MEDIATION**

~~§ 8.2.1 [reserved] Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to~~



~~comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~

**§ 8.2.2** ~~The Owner and Architect shall~~ If either party files a request for resolution of a contract controversy with the Chief Procurement Officer for Construction (CPOC) pursuant to Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, as amended, the Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties using a mediation process and mediator mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation agreeable to both. The Owner and Architect shall act in good faith in selecting and agreeing on mediation procedures and a mediator. If the Owner and Architect cannot in good faith agree on mediation procedures and/or a mediator, they shall use procedures and/or a mediator appointed by the CPOC. Mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period Administrative Review by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings CPOC.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be ~~enforceable as settlement agreements in any court having jurisdiction thereof~~ approved by the CPOC.

**§ 8.2.4** If the parties ~~do cannot~~ resolve a dispute through mediation pursuant to this Section 8.2, the parties shall so notify the CPOC and proceed in accordance with the procedures set forth in Article 17 of the South Carolina Code of Laws, as amended. ~~method of binding dispute resolution shall be the following:~~  
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other (Specify)

SC Code Ann Sect. 11-35-4230

### **§ 8.3 [reserved] ARBITRATION**

**§ 8.3.1** ~~If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

**§ 8.3.1.1** ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

**§ 8.3.2** ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

#### ~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

#### § 8.4 Continuing Obligations During Disputes

In the event of any Controversy between Owner and Architect under this Agreement, including but not limited to, whether or not any services Owner expects Architect to perform are within the scope of Basic Services or any dispute as to whether or not Architect is entitled to additional compensation for any Work requested, Architect shall continue to proceed diligently with the performance of its services under this Agreement pending resolution of the dispute, and Owner agrees to pay Architect in accordance with this Agreement for all services rendered by Architect which are not the subject of the Controversy.

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option (subject to Section 8.4), cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give ~~seven days'~~ written notice to the Owner ~~before suspending services.~~ Unless the Architect receives payment in full for undisputed amounts within twenty-one days of the Owner's receipt of the Architect's notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all undisputed sums due prior to suspension and any direct expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's ~~fees for the remaining services and the time schedules shall be equitably adjusted.~~ If the suspension exceeded 90 days, the Architect's fees for the remaining services shall be equitably adjusted.

**§ 9.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than ~~seven~~ 14 days' written notice.

**§ 9.4** Either party may terminate this Agreement upon not less than ~~seven~~ 21 days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 9.5** The Owner may terminate this Agreement upon not less than ~~seven~~ 21 days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.



§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for ~~the Architect's anticipated reasonable~~ profit on the value of the services ~~not performed at the Owner's request by the Architect, as a result of the termination.~~

§ 9.8 In the event of suspension or termination for convenience, upon request of Owner and payment of all fees pursuant to this Article, Architect shall promptly provide Owner with reproducible drawings and computer tapes or disks of all documents completed or in progress on the date of termination. The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 ~~and Section 11.9.~~

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 ~~This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction. Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the 2010 Edition of the South Carolina Modified AIA A201, 2007 Edition. Any reference in this document to the Agreement between the Owner and Contractor, AIA Document A101, or some abbreviated reference thereof, shall mean the 2010 Edition of the South Carolina Modified AIA A101, 2007 Edition.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Regulation 19-445.2180 provides as follows: "No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State."

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 The Contractor shall be entitled to performance and enforcement of obligations under the Agreement intended to facilitate performance of the Contractor's duties. Otherwise, nNothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 Subject to the Owner's written approval, which shall not be unreasonably withheld, the ~~The~~ Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. ~~The Architect shall be given reasonable access to the completed Project to make such representations.~~ However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. Architect shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Owner.

**§ 10.8** If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall, to the extent permitted by law, keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### **§ 10.9 ARCHITECT'S RECORDS**

Upon request, the Architect shall provide the Owner with copies of all documents, in their original form, in the Architect's possession that regard the Project.

#### **§ 10.10 PUBLICITY**

Architect shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Owner.

#### **§ 10.11 ECONOMIC CONFLICT OF INTEREST**

A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

#### **§ 10.12 DRUG-FREE WORKPLACE**

The Architect certifies to the Owner that Architect will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

#### **§ 10.13 FALSE CLAIMS**

According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

#### **§ 10.14 NON-INDEMNIFICATION**

Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (§ 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (§ 11-1-40)

#### **§ 10.15 RETENTION AND AUDIT OF ARCHITECT'S RECORDS**

The Architect and the Architect's Consultants shall comply with all applicable obligations of §11-35-2220 of the SC Code of Laws, as amended.

#### **§ 10.16 AUDIT OF COST OR PRICING DATA**

The Owner shall be entitled, at reasonable times and places, to audit the books and records of the Architect and the Architect's Consultants who have submitted cost or pricing data pursuant to either this Contract or to §11-35-1830 to the extent that such books and records relate to such cost or pricing data. If any cost or pricing data is required for this Contract, the Architect and the Architect's Consultants shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer; provided, however, that such records shall be retained for additional periods of time beyond this three-year period upon request of the Chief Procurement Officer.

#### **§ 10.17 CONTRACT AUDIT**

If this Contract or any Modification (other than a firm fixed price contract) is negotiated, the Owner shall be entitled to audit the books and records of the Architect and the Architect's Consultants to the extent that such books and records relate to the performance of the Contract or any Modification. Such books and records shall be maintained



by the Architect for a period of three years from the date of final payment under the Contract and by any Consultants for a period of three years from the date of final payment under the Architect's contract with the Consultant, unless a shorter period is otherwise authorized in writing by the Chief Procurement Officer. As used in this paragraph, the phrase "Chief Procurement Officer" shall have the definition given that phrase in SC Code Ann. §11-35-310.

#### **§ 10.18 FORCE MAJEURE**

In the event Architect is hindered, delayed or prevented from performing its obligations under this Agreement as a result of any fire, flood, landslide, tornado or other act of God, malicious mischief, theft, strike, lockout, other labor problems, shortages of material or labor, or any other cause beyond the reasonable control of Architect, the time for completion of Architect's work shall be extended by the period of resulting delay.

#### **§ 10.19 NO WAIVER**

Owner does not waive any prior or subsequent breach of the terms of the Agreement by making payments on the Agreement, by failing to terminate the Agreement for lack of performance, or by failing to strictly or promptly insist upon any term of the Agreement. Only a procurement officer has actual authority to waive any of the Owner's rights under this Agreement. Any waiver must be in writing.

#### **§ 10.20 HEADINGS**

The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Stage 1 Services (through completion of the Schematic Design Phase):

Stage 2 (Design Development Phase through completion of all Work of the Agreement):

**§ 11.2** For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

~~**§ 11.4** Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Three percent ( 3.00% ), or as otherwise stated below:~~

**§ 11.5** Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase		percent (		)	%)
Design Development Phase		percent (		)	%)
Construction Documents		percent (		)	%)
Phase					
Bidding or Negotiation Phase		percent (		)	%)
Construction Phase		percent (		)	%)
Total Basic Compensation	one hundred	percent (	100	)	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence, subject to Section 11.8.3;
- .2 Long distance services, project dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 ~~[reserved] Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 ~~[reserved] Site office expenses; and~~
- .11 ~~[reserved] Other similar Project-related expenditures.~~

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual costs ~~expenses~~ incurred by the Architect and the Architect's consultants ~~plus ( ) ten percent of the expenses incurred.~~

§ 11.8.3 Unless authorized in writing by the Owner prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the Budget and Control Board's Regulations For Reimbursement For Travel And Subsistence Expenses (Travel Regulations), as they appear in the STARS Manual published by the Comptroller General's Office. [http://cg.sc.gov/agencyinfo/disbregs/travel.htm#0] There shall be no charge for time spent in travel.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### § 11.10 PAYMENTS TO THE ARCHITECT



§ 11.10.1 An initial payment of zero dollars (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 ~~Unless otherwise agreed, P~~ payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. ~~Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. Payments due to the Architect and unpaid under this Agreement shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.~~  
(Insert rate of monthly or annual interest agreed upon.)

~~per annum~~

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty ~~of liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ The Owner shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the Owner's option to withhold for the purposes of set-off any moneys due to the Architect under this contract up to any amounts due and owing to the Owner with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

§ 11.10.4 In addition to the sections of Article 10, Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

SAMPLE